

Scott J. Kaplan, OSB No. 913350
sjkaplan@stoel.com
STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204
Telephone: (503) 224-3380
Facsimile: (503) 220-2480

Joseph W. Montgomery, III (admitted *pro hac vice*)
jwmontgomery@jonesday.com
John E. Iole (admitted *pro hac vice*)
jeiole@jonesday.com
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514
Telephone: (412) 391-3939
Facsimile: (412) 394-7959

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

SCHNITZER STEEL INDUSTRIES, INC.,
an Oregon corporation; and MMGL CORP.,
a Washington corporation,

Plaintiffs,

v.

CONTINENTAL CASUALTY
COMPANY, an Illinois corporation; and
TRANSPORTATION INSURANCE
COMPANY, an Illinois corporation,

Defendants.

Case No.: 3:10-cv-01174-MO

STIPULATED ~~PROPOSED~~ ORDER
RESOLVING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT
REGARDING THE RETROACTIVITY
AND CONSTITUTIONALITY OF SB 814

The parties by and through their undersigned counsel hereby stipulate and move the
Court to enter an order resolving the relief sought in defendants' October 1, 2013 (corrected

October 2, 2013) Motion for [partial] Summary Judgment Regarding the Retroactivity and Constitutionality of SB 814 (ECF No. 237) (“Summary Judgment Motion”).

RECITALS

A. Defendants’ (collectively “Continental”) Summary Judgment Motion asserts that Section 6 of Oregon Senate Bill 814 (“Section 6”), enacted and effective June 10, 2013, does not apply retroactively to, and could not constitutionally be construed to subject an insurance company to liability for, alleged unfair environmental claims settlement practices occurring before June 10, 2013.

B. In a letter dated July 19, 2013, Schnitzer requested that Continental reimburse Schnitzer for alleged unpaid defense expenses and further stated that its July 19 letter constituted notice of a claim under Section 6. Schnitzer maintains and confirms that it does not seek recovery pursuant to the July 19 letter in its Amended and Supplemental Complaint (ECF No. 226).

C. Schnitzer maintains and confirms that its operative pleading in this action, its Amended and Supplemental Complaint, does not seek recovery under Section 6, including recovery of enhanced damages, for alleged unfair environmental claims settlement practices occurring prior to June 10, 2013. Rather, Schnitzer alleges a right to relief under Section 6 only for any unfair environmental claims settlement practices that have allegedly occurred or may occur after June 10, 2013.

D. Schnitzer maintains and confirms that it has not taken the position in its Amended and Supplemental Complaint that Section 6 applies retroactively to any defense costs submitted by Schnitzer to Continental for reimbursement prior to June 10, 2013.

E. By entering into this stipulation to avoid unnecessary motion practice, no party intends to waive any arguments or positions about whether Section 6 of SB 814 or any other provision of SB 814 applies retroactively or whether such retroactive application would be constitutional, nor is this stipulation intended to be an admission of any kind by any party.

OPERATIVE TERMS

1. Schnitzer's Amended and Supplemental Complaint seeks recovery under Section 6 only as follows:

a. Pursuant to paragraph 48 of the Amended and Supplemental Complaint, Schnitzer alleges a right to enhanced damages for any unfair environmental claims settlement practices within the meaning of Section 6 only with respect to defense costs first submitted by Schnitzer to Continental for reimbursement on or after June 10, 2013.

b. Pursuant to paragraph 51(f) of the Amended and Supplemental Complaint, Schnitzer alleges a right to recover interest under Section 6 for invoices first submitted on or after June 10, 2013 and not paid in full by Continental within 30 days of receipt by Continental.

c. Pursuant to paragraph 51(g) of the Amended and Supplemental Complaint, Schnitzer seeks enhanced damages in an amount determined by the Court only as to any unfair environmental claims settlement practices within the meaning of Section 6 with respect to defense costs first submitted by Schnitzer to Continental for reimbursement on or after June 10, 2013.

2. Schnitzer does not seek under its Amended and Supplemental Complaint enhanced damages under Section 6 for defense costs first submitted to Continental for reimbursement before June 13, 2013.

3. This stipulation fully resolves the issues raised in the Summary Judgment Motion.

IT IS SO STIPULATED this 24th day of October, 2013.

s/ Scott J. Kaplan

SCOTT J. KAPLAN, OSB NO. 913350

sjkaplan@stoel.com

STOEL RIVES LLP

900 SW Fifth Avenue, Suite 2600

Portland, OR 97204

Telephone: (503) 224-3380

Facsimile: (503) 220-2480

Attorneys for Plaintiffs

s/ Lawrence Gottlieb

LAWRENCE GOTTLIEB, OSB NO. 070869

lgottlieb@bpmlaw.com

BETT PATTERSON & MINES, PS

One Convention Place, Suite 1400

701 Pike Street

Seattle, WA 98101

Telephone: (206) 292-9988

Facsimile: (206) 343-7053

Attorneys for Defendants

DECLARATION REGARDING SIGNATURES

I, Scott J. Kaplan, declare under penalty of perjury that I obtained concurrence to file this document from other signatory to this document.

s/ Scott J. Kaplan

SCOTT J. KAPLAN

IT IS SO ORDERED this 25th day of Oct., 2013

/s/ Michael W. Mosman

THE HONORABLE MICHAEL W. MOSMAN

United States District Court Judge